Quarterly Report

OF THE

ATTORNEY GENERAL

OF

ALABAMA

FOR THE PERIOD

FROM JULY 1, 1972

THROUGH SEPTEMBER 30, 1972

WILLIAM J. BAXLEY, Attorney General

VOLUME 148

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QUARTERLY REPORT

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TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS OF ALABAMA:

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from July 1, 1972, through September 30, 1972, is published in compliance with the provisions of Title 55, Section 228, Code of Alabama 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State, and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy district attorney of his county. This section also requires that I send a copy of this report to each distric attorney and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

WILLIAM J. BAXLEY

Attorney General

WILLIAM J. BAXLEY
Attorney General

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Deputy Attorney General

E. RAY ACTON
Executive Assistant

WALTER S. TURNER
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OPINIONS

July 14, 1972

Hon. John B. McKinney, Jr.
Mayor of Talladega
Post Office Box 498
Talladega, Alabama 35160

Attorneys — Courts — Constitutional Law — Municipalities.

1. The Supreme Court of the United States has held that absent a knowing and intelligent waiver of counsel, an indigent defendant may not be imprisoned after conviction without counsel.

2. Since present Alabama statutes do not provide for appointment and pay of counsel in municipal courts, trial judges of such courts are authorized to appoint counsel where imprisonment is a real possibility and the municipality may make provision for reasonable compensation of such counsel whose duty it is to serve.

Opinion by Assistant Attorney General Sykes

Dear Mayor McKinney:

Your request for an opinion of this office under date of June 13, 1972, is as follows:

> "I would certainly appreciate it, at this time, if your office could provide the City of Talladega with an opinion on the recent Supreme Court ruling requiring public defenders for all offenses subject to a jail sentence. Needless to say, as the Mayor of Talladega, I am somewhat concerned about the financial burden this requirement will place upon my city; and I would deeply appreciate your advice and counsel at the earliest possible moment concerning the direction or approach we should take regarding this matter."

Enclosed is a copy of the opinion of the United States Supreme Court issued June 13, 1972, **Argersinger v. Hamlin,** ——— U. S. ———, 40 L. W. 4679, holding that counsel must be provided to indigent defendants regardless of whether the offense is a felony, misdemeanor, or violation of a municipal ordinance, if imprisonment is included in his punishment.

As the Supreme Court stated it:

> "We hold, therefore, that absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor or felony, unless he was represented by counsel at his trial."

While the Alabama statutes provide for the appointment of and pay for counsel in cases where defendant is not able financially, or

otherwise, to obtain counsel, this statute expressly excludes cases in Mayors' courts, recorders' courts, or other municipal courts, and the courts of justices of the peace. Act No. 2420, Acts 1971, approved October 1, 1971.

So, we have a situation where the Supreme Court of the United States has said counsel is necessary with no express statutory provision providing for counsel.

In my opinion, until the Legislature acts to provide a specific method of appointment and compensation to legal counsel, the judge of the trial court, including municipal courts, in cases wherein the Supreme Court of the United States has said counsel is necessary, has inherent power to appoint counsel to represent and defend an indigent defendant where imprisonment is a probability, or even a real possibility. It is further my opinion that the municipal governing body may make provision from its general funds for reasonable compensation to such counsel and that it is the duty of such appointed counsel, as a member of the Bar, and knowing of this Supreme Court decision, to serve to the extent possible and within reasonable limits.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

August 1, 1972

Honorable Roy Sanders
State Comptroller
Department of Finance
Division of Control and Accounts
Montgomery, Alabama 36104

Travel Expenses — State Employees — Comptroller.

1. Under the provisions of Act No. 470 of the 1969 Session of the Legislature, the so-called unit system does not apply to any part of the travel when such travel requires an overnight stay.

2. Quarterly Report of Attorney General, Volume 129, Page 42, and Quarterly Report of Attorney General, Volume 46, Page 21, are hereby overruled insofar as they conflict herewith.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

I have your letter of recent date requesting an opinion of this office in which you ask the following question:

> "Does the so-called unit system apply to travel by state employees when such travel requires an overnight stay?"

My answer to your request is in the negative; that is to say, when persons travelling in the service of the State of Alabama are required to stay overnight, the unit system does not apply to any part of such travel.

Subparagraph 2 of Act No. 470 of the 1969 Session of the Legislature reads, in part, as follows:

> ". . . For travel which does **not require an overnight** stay, the traveler shall be paid a meal allowance of two dollars and seventy-five cents for a trip of from six to twelve hours' duration and for travel in excess of twelve hours duration the traveler shall be paid one such meal allowance and one-fourth of the per diem allowance." (Emphasis supplied.)

It is obvious from the above that when a person is traveling on State business and such travel requires that such person be away from his ordinary station overnight, the so-called unit system does not apply to such travel. In other words, if a person leaves Montgomery one day and returns the next day, this travel requires overnight and there is no requirement in the law that he submit to your department on any form showing what part of any day he was travelling. This, for the reason that the statute itself only requires unit reporting when the employee is away from his station for less than overnight stay.

It is my understanding that you are relying on your authority to request submission of the unit accounting on Title 55, Section 170(2) and Title 55, Section 68, Code of Alabama 1940. Section 170(2) provides that every state and county officer shall keep books, records, and accounts and make reports of his office in accordance with a uniform system prescribed by the Chief Examiner of Public Accounts. This section, of course, is for the convenience of the Chief Examiner and is part of the so-called uniform accounting and reporting accounting and has no application to the form used by persons travelling in the service of the State as provided in Act No. 470, supra. Section 68, supra, merely allows the Director of Finance to make certain rules and regulations in carrying out the business of the department. It does provide that such rules and regulations shall have the effect of the law and shall govern departments of the State of Alabama.

Even in view of the above provisions that rules and regulations of the Department of Finance have the force and effect of the law, it does not authorize the department to make a rule and regulation which goes beyond that which the law requires. This regulation requires that persons travelling in the service of the State, where such

travel requires an overnight stay, to file a unit form for such travel. This is not required by the statute and, in my opinion, a rule and regulation cannot be adopted which goes beyond the force and effect of the law.

You call my attention to the statutory construction, commonly referred to as administrative construction. You state that it has been adminisratively construed prior to the passage of Act No. 470, supra, that the unit system applies to some part of the travel which requires an overnight stay. In reply thereto, you are advised that administrative construction has no application to the question here considered. This rule of statutory construction only applies when a statute has been amended with a certain administrative construction placed thereon.

Act No. 470 is not an amendatory act, on the contrary ,is an original act and, therefore, is not subject to any administrative construction.

The opinions appearing in Quarterly Reports of the Attorney General, Volume 129, page 42, and Volume 46, page 21, insofar as they conflict with the opinion herein expressed, are hereby overruled and withdrawn.

You are, therefore, advised that the so-called unit system has no application to travel by State employees when such travel requires an overnight stay.

Yours very truly,

WILLIAM J. BAXLEY
Attorney General

August 1, 1972

Honorable Otto E. Simon
City Attorney
City of Prichard
Prichard, Alabama

Boards of Registrars — Elections — Municipalities — Opinions Overruled, Modified or Distinguished — Registration.

A person otherwise qualified may vote in a municipal election even though he registers to vote less than ten days prior to the date of the election.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion dated July 20, 1972, is as follows:

> "The City Council of the City of Prichard has asked me to request an official opinion from your office as to the requirement that a voter be registered ten days prior to the date of the election at which he offers to vote.
>
> "On August 7, 1968, the Honorable MacDonald Gallion issued an opinion to the Honorable William McDermott, City Attorney for the City of Chickasaw stating that the ten day requirement was valid.
>
> "Due to the changes in the law that have come about in the past year, we would appreciate your opinion as to this matter.

All municipal elections held in the City of Prichard must be conducted under the provisions of Act No. 663, Acts of Alabama 1961, page 827, as amended by Act No. 404, Acts of Alabama, Regular Session 1965, page 582. See Quarterly Report of Attorney General, Volume 126, page 8.

The opinion to which your request refers is reported in Quarterly Report of Attorney General, Volume 132, page 22. That portion of Act No. 663, as amended, supra, which provides that a person may not vote in an election unless he has registered not less than ten days prior to the date of the election is quoted in said opinion.

In an opinion rendered to Honorable John F. Watkins, Director, Alabama League of Municipalities, dated June 2, 1972, this office quoted a portion of the opinion of the Supreme Court of the United States in the case of **Dunn v. Blumstein,** 31 L. Ed. 2d 274. Our opinion stated, in part, as follows:

> "The Supreme Court applied a most stringent test to any statute which grants the right to vote to some citizens and denies the franchise to others. Such a statute can withstand constitutional scrutiny only upon a clear showing that the burden imposed is necessary to protect a compelling State interest. It is not sufficient for the State to show that durational residence requirements further a very substantial State interest."

I am of the opinion that there is no compelling State interest requiring a person otherwise qualified to register to vote not less than ten days prior to the date of a municipal election. For this reason, it is my opinion that that portion of Act No. 663, as amended, supra, here considered, is unconstitutional and invalid.

Therefore, you are advised that a person who registers to vote less than ten days prior to the date of a municipal election may vote in such election if he is otherwise qualified.

The opinion reported in Quarterly Report of Attorney General, Volume 132, page 22, is hereby overruled.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

August 2, 1972

Hon. Huey B. Holland
Dale County Tax Assessor
Ozark, Alabama 36360

Motor Vehicles — Ad Valorem Tax — Assessments Soldiers' and Sailors' Civic Relief Act

1. For the purpose of assessment of ad valorem taxes on motor vehicles under Title 51, Section 704, as amended, infra, on a quarterly basis, and particularly when first brought into the State, the tax assessor can require sufficient proof, to his satisfaction, as to when such vehicles are first brought into the State, and the failure of the owner to produce such proof will authorize the tax assessor under said Statute to assess the vehicle involved for four quarters or for a full year.

2. Under the Soldiers' and Sailors' Civil Relief Act of 1940, and said Act, as amended, the motor vehicles of nonresident servicemen, in Alabama under military orders, are not subject to assessment for ad valorem taxes, and when sold by such servicemen to a dealer are to be treated under Title 51, Section 704, the same as new cars, and are not subject to assessment in this State until sold from the inventories of the dealer. Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion from the Attorney General dated July 5, 1972, is as follows:

"We would like an opinion on the following problem which has come up on numerous occasions. For instance a motor company sells a used car which comes from another state and comes into this office to purchase license plates for said car. We are sometimes presented with a title from another state which may be two or three years old. Most of the time we are not given a tag number as most people around Ozark are service connected and can transfer his tag and does not give the motor company the tag or registration receipt. Therefore, when the motor company sells the car a receipt showing where

it had previously been registered cannot be produced. In such cases, we have been charging taxes on these vehicles even when we have the title presented to us. The reason for this is because a title is not proof of registration for the current year, and does not show proof of taxes being paid for the current year. If we are wrong in charging this tax, please advise me as soon as possible. In these cases the automobiles have come into the State of Alabama after October 1971.

"My question is: Is the title sufficient evidence as proof of registration in another state? If not, then a current registration and an affidavit stating when the vehicle entered Alabama would be what we would need.

"We would appreciate having an opinion as soon as possible, because the motor companies are confused along with this office, about the reasons for charging taxes when they presented a title."

Under Title 51, Section 704, as amended, Code of Alabama 1940, Recompiled 1958, the responsibility of properly assessing a motor vehicle for ad valorem taxes on the quarterly basis prescribed therein is clearly placed on the tax assessor. Therefore, under the Statute, the owner of the vehicle must furnish to the tax assessor sufficient proof, to the satisfaction of the tax assessor, as to when a vehicle was first brought into this State, or when purchased new in this State, the date it was purchased from the dealer, in order for the tax assessor to determine the quarter during the tax year that the vehicle becomes subject to assessment. Therefore, as a matter of common sense, it is hard to see how a title document or a registration certificate from another state, by themselves, could definitely establish the date when a vehicle was first brought into Alabama. Such documents would be helpful in establishing the ownership of the vehicle, but would be of little or no value in the matter of proving when the vehicle was actually brought into the State for the purpose of assessing it on the quarterly basis.

The foregoing being considered, your question is answered to the effect that you would be justified in declining to accept a title or a registration certificate, standing alone, as offering sufficient proof as to when a vehicle was first brought into this State. Thus, where you do not deem such to be sufficient proof, then you can require other or additional proof, e.g., an affidavit from the owner, as to when the car was first brought into the State. A failure on the part of the owner, to produce such other or additional proof would authorize you under Section 704 to assess the vehicle involved for four quarters or for a full year. Quarterly Report of the Attorney General, Vol. 138, page 13. Also see Opinion to Mr. Roy C. Baxter, Tax Assessor, Houston County, dated July 27, 1971.

From what you state in your request, it can also be implied that a large part of your troubles are caused by servicemen who are residents of other states, but who have been stationed in Alabama and at

Fort Rucker under military orders, and who clearly come under the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940, and said Act as amended, 50 U.S.C.A. 574. These servicemen sell or trade their used cars to dealers or others in this State, and your problem in such cases is when do such cars become subject to assessment for ad valorem taxes under Section 704? And further, what proof is necessary under Section 704 in order for you as tax assessor to determine when such cars become subject to assessment for ad valorem taxes?

Under 50 U.S.C.A., Section 574, the personal property, including automobiles, of a nonresident serviceman brought with him into this State while he is here under military orders, is considered to have its situs in his home state and not in Alabama, and would not be subject to assessment for ad valorem taxes so long as he is in the State under such conditions. **Dameron v. Broadhead,** 345 U.S. 322, 73 S.Ct. 721; Quarterly Reports of the Attorney General, Vol. 81, pages 16 and 35, and Vol. 129, page 35. Therefore, when automobiles are sold or traded in by such servicemen to dealers in this State, they would have to be considered the same as new cars in the hands of a dealer, and they would not be subject to assessment under Section 704 for ad valorem taxes until they are sold by a dealer from his inventories as in the case of new cars, and until the quarter of the tax year in which they are so sold.

The date when such automobiles become subject to assessment for ad valorem taxes under Section 704 would then be the date that they were sold from the dealer's inventories, where sold by the serviceman to a dealer, or when sold by the serviceman to a person in this State other than a dealer, the date when the car is so sold and title passes from the serviceman to such individual.

In such cases it appears that the best means of proving or establishing such dates and when the car became subject to assessment would be the bill of sale, coupled with an affidavit from the purchaser giving the date of purchase and the details as to why the car was not theretofore subject to assessment in this State.

To avoid further confusion in such cases, it is also well to note, that ad valorem taxes are assessed beginning on October 1, at the start of the tax year, but are not due and payable until the following October 1, at the end of the tax year. Therefore, while cars brought into the State for the first time would be under Section 704 assessable when brought into the State, and on a quarterly basis, depending upon the quarter of the tax year it was brought into the State, no ad valorem tax would be due to be paid on the vehicle until the end of the year and following October 1. Quarterly Reports of the Attorney General, Vols. 108 and 110, pages 7 and 24, respectively.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

August 21, 1972

Hon. Eldon Sharpe
Tallapoosa County Tax Assessor
Dadeville, Alabama 36853

Ad Valorem Taxes — Motor Vehicles — Mobile Homes — Assessments.

1. When as is described under Title 51, Section 704(1), as amended, Code of Alabama 1940, Recompiled 1958, a mobile home has been assessed as a part of the real estate, the tax assessor under Title 51, Section 55, Code of Alabama 1940, Recompiled 1958, cannot, as he is prohibited from doing in the case of any other real property, lower or reduce the assessed value of same as was fixed for the purpose of the ad valorem tax for the preceding tax year. Only the Board of Equalization would have such authority in the case of real property.

2. Title 51, Section 704, as amended, Code of Alabama 1940, Recompiled 1958, provides a special procedure for the purpose of assessing motor vehicles for ad valorem taxation.

3. The tax assessor under Section 704, as amended, supra, is given the authority to initially and in the first instance assess motor vehicles (which are personal property), subject to a right of review on the part of the taxpayer under the usual procedure. Therefore, the tax assessor does in the first instance have the right to reduce for the current year's assessment the assessed value of a motor vehicle as was fixed for ad valorem tax purposes for the preceding year.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion from this office dated July 28, 1972, is as follows:

"I, respectfully request your opinion on the following two questions concerning assessment of mobile homes and automobiles.

"1. When a mobile home is assessed as real property, can the value be lowered from year to year to cover depreciation. When you have no board of equalization can this be done by the Tax Assessor.

"The reason for this question is based on the fact that if a mobile home is assessed and a license plate is purchased, the taxable value depreciates each year.

"2. I would appreciate you advising me on the assessment rate of automobiles.

"A. Is the valuation left up to the Tax Assessor.

"B. If the tax scale that the Tax Assessor prepares gives the assessed value, is it mandatory that every automobile of the same model and year be assessed at the same value or is the valuation to be used left to the discretion of the Tax Assessor.

"(Example) If the tax scale prepared by the Tax Assessor gives the value of a 1968 chevrolet at $500, can the Tax Assessor assess at a lower value if he desires.

"C. What should be the lawful assessment rate of Automobiles."

1. Your first question is answered in the negative if the mobile home or house trailer involved has been permanently affixed to the real estate and has been assessed as an improvement or part of the real estate.

Section 55 of Title 51, Code of Alabama 1940, Recompiled 1958, gives to the County Board of Equalization the exclusive right to reduce or lower the assessed value of real property as was fixed for ad valorem taxation for the preceding tax year. Tax assessors under the law would have no such authority. Consequently, and in the case of real estate, only boards of equalization would have the authority to make such deductions. You also speak, under your first question, of a license or permit being issued for such house trailer, presumably, under Title 51, Section 704(1), as amended, Code of Alabama 1940, Recompiled 1958. Section 704(1), supra, however, expressly excludes from the $3.00 license or permit house trailers which have been assessed for ad valorem taxation as a part of the real estate. Therefore, the owner of a house trailer will never owe the license or permit under Section 704(1), where the trailer has lost its identity as personal property and a motor vehicle by having been assessed as a part of the real estate. It is also well to remember, in this regard, that a house trailer can never be assessed as a part of the realty where the owner of the house trailer and the owner of the land on which it is located are not one and the same person. Quarterly Report of the Attorney General, Volume 136, page 19, at page 22.

A mobile home or house trailer when not permanently affixed to the realty and assessed as a part thereof is classified under Title 51, Sections 692 and 704(1), as amended, supra, as a motor vehicle, and is subject to the license tax and ad valorem tax laws as personal property and as a motor vehicle.

2. In considering your questions relating to motor vehicles under "2," it should first be noted that Title 51, Section 704, as amended, supra, prescribes the procedure for assessing motor vehicles for ad valorem taxation:

". . . all motor vehicles shall be assessed and the taxes thereon **shall be collected solely as herein provided.**" (Emphasis Supplied)

Section 704, as amended, supra, provides that the tax assessor shall assess motor vehicles for ad valorem taxation, and his certificate of assessment on a form prescribed by the State Department of Revenue shall be the warrant of the tax collector to collect the tax as shown thereon. However, in the case of a protest being timely filed by a taxpayer, such assessments can be reviewed under the usual procedure relating to the reviewing of assessments made as to personal property.

The foregoing being considered, your question "2A" is answered in the affirmative, and to the effect that under Title 51, Section 704, as amended, supra, the valuation of motor vehicles is left up to the tax assessor in the first instance. Section 704 gives him the authority to initially determine the value of motor vehicles for the purpose of assessment, which would include the right to lower the valuations of such vehicles as were fixed by the assessments made for the prior year. He may also in doing so take into consideration the fact that such vehicles depreciate in value from year to year.

Your question designated as "2B" is answered with certain limitations to the effect that a tax assessor may deviate from the so-called scale where the particular facts of a case and good sound reasons would warrant same.

While Section 704(1) does not expressly provide for such, it is customary and also very common practice in this State, due to the tremendous number of motor vehicles involved, and also because of their tendency to materially depreciate in value in the course of a year, for the tax assessors of the several counties of this State to prepare and use a tax scale, or even the so-called Blue Book value, in assessing all motor vehicles of the same type, model, and year for the purpose of the ad valorem tax. However, if as a practical matter and for good reasons, the tax assessor finds that a certain motor vehicle should be given a different valuation for a certain year, then under Section 704, it appears that he can deviate from the scale or Blue Book value in assessing a particular motor vehicle. Each such case would have to stand on its own particular facts. It cannot be done arbitrarily and capriciously. Such a departure or deviation from the scale and usual procedure must be a reasonable and fair one. Otherwise, it might be said to violate the rule as to uniformity and to be discriminatory, raising certain constitutional objections under the Fourteenth Amendment to the Federal Constitution and comparable provisions of the Alabama Constitution of 1901.

Your question "2C" is answered to the effect that under Acts No. 116 and 166 of the 1971 Third Special Session of the Alabama Legislature motor vehicles fall within "Class II," and within the designation of "all property not otherwise classified," and, as a general proposition, are to be assessed at 25 per centum of their fair and reasonable market value, unless such statutes expressly otherwise provide.

As Tallapoosa County is not listed on page 3 of Act No. 166, supra, as one of the counties having a different percentage for assessment, the overall percentage as to motor vehicles under "Class II" would apply; that is, 25 per centum of the fair and reasonable market value of such vehicles would be applicable thereto for the purpose of assessing ad valorem taxes for state, county, and other taxing authorities in Tallapoosa County.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

August 28, 1972

Honorable Jerry M. White
District Attorney
Twentieth Judicial Circuit of Alabama
Houston County Court House
Dothan, Alabama 36301

Indictments — Pleading — Marijuana — Selling Marijuana — Uniform Controlled Substances Act — Controlled Substances — Criminal Procedure.

Opinion by Assistant Attorney General Marston.

Dear Sir:

Your request for an official opinion dated July 11, 1972, is as follows:

> "In the case of **Gregg Duin vs. State of Alabama,** the Supreme Court reversed the Court of Criminal Appeals but did not comment on what they would have done had a demurrer been filed to the indictment on the grounds that it failed to name the vendee. In light of this, do you have any recommendation as to the framing of a drug selling indictment — should or should not the vendee be named?
>
> "Your opinion will be greatly appreciated in this matter."

As you know, an indictment may within its four corners present two kinds of defects; that is, it may be void or demurrable. A void indictment is one that does not accuse the defendant of a crime; such an indictment will not support a judgment. A merely demurrable indictment will support a judgment of conviction but upon proper demurrer must be set aside.

In **Duin v. State,** ____ Ala. App. ____, 260 So. 2d 599 (1971), the Court of Criminal Appeals of Alabama held that an indictment for selling marijuana was void if it did not name the vendee. However

in **Ex Parte State,** ____, Ala. ____, 260 So. 2d 602 (1972), the Supreme Court of Alabama reversed the Court of Criminal Appeals' holding, saying that such an indictment was not void. However, on the subject of whether such an indictment was demurrable the Supreme Court said this:

> "Appellant did not demur to the indictment, or otherwise, by competent pleading challenge its legal sufficiency. **We, therefore, pretermit a determination as to what effect a demurrer raising omission of the name of the vendee would have had." Ex Parte State,** 260 So. 2d 602, 603. (Emphasis supplied.)

The **Duin** litigation then is of no help on the issue of the sufficiency of an indictment for selling marijuana which does not name the vendee against a demurrer.

It is our opinion that an indictment for selling marijuana which does not name the vendee is not demurrable, but it must be noted that there are arguments against this position. For example, nearly a hundred years ago Dr. Francis Wharton noted that Alabama did not follow the Majority American Rule of not requiring the name of the vendee in an indictment for a selling offense. **Wharton's Criminal Law, Seventh Edition,** Vol. II, Section 2445. See also **Dorman v. State,** 34 Ala. 216 (1857) and **Grattan v. State,** 71 Ala. 344 (1879).

However, our opinion is based on the many cases which hold that an indictment drawn in the words of the statute is sufficient. We also note that while there is no Code form for an indictment for selling marijuana, there is a provision that forms analogous to those given are sufficient where no form is provided, and none of the forms provided for selling offenses call for the name of the vendee, except Form 98 (selling a pistol or bowie knife to a boy under the age of eighteen years [indictments for selling to special persons are discussed below]). See Title 15, Section 259 of the Code of Alabama 1940, as amended. Our opinion is also based on the fact that the evil, sought to be suppressed by the anti-marijuana laws, is to society, not to the vendee. Finally, our opinion is based on the belief that the days when important legal controversies were decided on pleading points have passed into history. We believe when it is given an opportunity to rule on this issue, our Supreme Court will hold, in accordance with the overwhelming modern American authority, that an indictment for selling marijuana which does not name the vendee is not, for that reason, demurrable. See, for example, **Collins v. Markley,** (7th Cir., 1965) 346 F. 2d 230.

However, as pointed out above, this issue is far from settled and, therefore, caution would dictate that, in important cases and in other cases where there would be no harm in it, the indictment should be drafted to include the name of the vendee, if he is known, or an averment that he is not known.

There is one exception to what has been said. The Alabama Uniform Controlled Substances Act (Act No. 1407 of the 1971 Regular

Session) creates two separate crimes which involve selling marijuana. Section 401(a) condemns selling marijuana and punishes such sales with a penalty of two to fifteen years imprisonment and a fine of not more than $25,000.00. Section 406 condemns sales of marijuana by persons over the age of eighteen years to persons under the age of eighteen years and punishes such sales with much heavier penalties. While the Majority American Rule is that an indictment for a selling offense need not name the vendee, this rule reverses where the nature or station of the vendee is an element in the corpus delicti. This rule is followed in Alabama; see Title 15, Section 259(98). Thus an indictment under Section 406 of the Alabama Uniform Controlled Substances Act must allege that the defendant was over the age of eighteen years at the time of the sale and name the vendee with an allegation that he was under the age of eighteen years at the time of the sale.

We hope what has been said proves helpful to you.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

September 5, 1972

Honorable Fred H. Davis
Bibb County Judge of Probate
Centerville, Alabama

Licenses, Fees, Mobile Homes.

1. The licenses required to be purchased under Title 51, Section 605, Code of Alabama 1940 (Recompiled 1958) and Act 1938, Acts of Alabama 1971 are separate and distinct.

2. Money for the license required under Title 51, Section 605, Code of Alabama, supra, is payable to the appropriate Judge of Probate. The monies for the license required under Act No. 1938, Acts of Alabama 1971 are payable to the State Fire Marshal of the Insurance Department.

Opinion by Assistant Attorney General Barnes

Dear Sir:

Your request for an official opinion, dated July 11, 1972, is as follows:

"I am writing in regard to Act Number 1938 of the Regular Session 1971, of which I enclose a copy.

"My questions are:

"(1) Does this in any way increase the mobile home license purchased at the Probate Office under Title 13, Section 605.

"(2) To whom is this fee payable and explain fully?"

I am of the opinion that your first question should be answered in the negative. Section 605 of Title 51, Code of Alabama 1940 (Recompiled 1958) provides for the purchase of a license for those persons in the business of dealing in trailers. The license fee is collected and administered by the Judge of Probate. The license required to be purchased by mobile home dealers, under the provisions of Act No. 1938, Acts of Alabama 1971, is administered by the State Fire Marshal of the Insurance Department. The monies collected are to be utilized by the Fire Marshal in the enforcement of Act No. 1938.

These two licenses are completely separate and distinct in that the license required under Section 605 is considered a general revenue measure, while the money collected for the license under Act No. 1938 is only to be used to implement the operation of Act No. 1938.

Section 605 was not repealed upon the enactment of Act No. 1938 and I am of the opinion that a mobile home dealer would be required to purchase both licenses.

Your second question was answered in answering your first question.

Yours very truly,

WILLIAM J. BAXLEY
Attorney General

September 6, 1972

Colonel Walter L. Allen, Director
Department of Public Safety
Public Safety Building
Montgomery, Alabama 36104

State and State Departments — Department of Public Safety — Driver Licenses — Alabama Chemical Test For Intoxication Act.

Alabama Chemical Test For Intoxication Act is construed to provide for period of suspension of forty-five (45) days for licensed resident drivers and non-resident drivers exercising privilege to drive in Alabama, and further provides that unlicensed resident drivers or resident drivers without an operator's permit shall be denied issuance of such license or permit for period of forty-five (45) days. Opinion overrules previous opinion to Colonel Floyd H. Mann,

Director, Department of Public Safety, dated December 19, 1969, reported in Quarterly Report of Attorney General, Volume 137, page 76, which opinion is hereby withdrawn.

Opinion by Assistant Attorney General Calhoun.

Dear Colonel Allen:

Reference is made to your request that this office reconsider its opinion rendered to Colonel Floyd H. Mann on December 19, 1969, wherein Colonel Mann presented several questions pertaining to the Alabama Chemical Test For Intoxication Act, Act No. 699, Acts of Alabama 1969, Regular Session, codified as Title 36, Sections 154-158, Code of Alabama 1940, Recompiled 1958. The opinion which you wish us to reconsider is reported in Quarterly Report of Attorney General, Volume 137, page 176, and a copy of said opinion is attached hereto. The opinion rendered to Colonel Mann is hereby overruled and withdrawn and the one expressed hereinbelow is substituted therefor.

The questions posed by Colonel Mann's opinion request are answered as follows:

A. No period of suspension is authorized under Section 1(a) of the Act.

B. No period of suspension is authorized under Section 1(b) of the Act.

C. Section 1(c) of the Act authorizes the suspension of the license or permit to drive of drivers licensed in Alabama without specifying a time period for the authorized suspension. This Section likewise authorizes the suspension of the driving privilege in Alabama given to a non-resident without specifying a period of time for the suspension. Lastly, this Section empowers the Director to deny to an unlicensed resident the issuance of a license or permit to drive for a period of forty-five (45) days after the date of the alleged violation.

D. Section 3 of the Act provides the following:

> "Whenever and wherever the words 'driving privilege' or 'privilege' appear herein, it shall mean both the driver license of those licensed in Alabama, and the driving privilege of unlicensed residents and the privilege of non-residents, licensed or not; the purpose of this section being to make unlicensed and non-resident drivers subject to the same penalities as licensed residents."

Obviously, the declared purpose of Section 3 is to subject all drivers brought within the purview of the Act to the same penalty as regards the period of time imposed, and this is so whether the driver was a licensed Alabama resident, an unlicensed Alabama resident, or a non-resident, licensed or not. Accordingly, in order to effectuate the express purpose of Section 3, supra, it is my opinion that the Act should be construed to authorize the Director to impose the

same penalty as to length of time on all drivers brought within the provisions of the Act, whether licensed or unlicensed residents or non-residents, and that period of time is the forty-five (45) — day period authorized in Section 1(c), supra.

If you have any questions concerning this matter, please do not hesitate to call on us.

Yours very truly,

WILLIAM J. BAXLEY
Attorney General

September 18, 1972

Honorable O. Howard Moore
Tax Assessor Madison County
Madison County Court House
Huntsville, Alabama

Ad Valorem Taxes — Constitutional Amendments — Taxation

Act No. 116 and Act No. 166, Third Special Session, 1971 establishing a classification system for ad valorem taxes discussed generally.

Opinion by Assistant Attorney General Livingston.

Dear Mr. Moore:

Your request for an opinion dated August 18, 1972 is as follows:
"Request for your opinion as to Tax Assessors procedures as of October 1st, 1972, in regard to Acts No. 116 and 166.

"In view of the classification of properties as provided for in Act #116, we are to use 15% of full value for properties under Class #3 and 25% of full value for property under Class #2, beginning October 1st, 1972, for 1973 Assessments.

"#1 — In recent years I have used 25% as a tax value for Class #2 and #3 properties. These owners will want the same treatment as the New Owners I will assess for the year 1973, at 15%. What legal grounds must I stand on, if reductions are requested, since I will not know the present 100% value of older properties?

"#2 — Also please give me your opinion, in view of recent suits, as to what type properties will fall into Class #3 for the year 1973.

"#3 — I also request your opinion as to when the several governing bodies may change their millages, and what will be

their authority for changing millages, prior to re-appraisal. Sections D and E of Act #116 seem to conflict as to procedures in this regard."

As a result of the adoption of a constitutional amendment on May 30, 1972, proposed by Act No. 116, Third Special Session, 1971, the enabling Act No. 166, Third Special Session, 1971, became effective establishing a classification system for ad valorem taxation in this state. Section 1 of Act No. 166 provides, in part, as follows:

"Section 1. Section 17, Title 51, Code of Alabama 1940, as amended, is hereby further amended to read as follows:

"1. With respect to ad valorem taxes levied by the state, and, unless otherwise provided with respect to ad valorem taxes levied by a county, municipality or other taxing authority other than the State all taxable property shall be divided into the following classes and no other and shall be assessed for ad valorem tax purposes at the following ratios of assessed value to the fair and reasonable market value of such property:

"CLASS I. All property of utilities used in the business of such utilities, 30%.

"CLASS II. All property not otherwise classified, 25%.

"CLASS III. All agricultural, forest and residential property, 15%."

The above percentages apply to the state levy of ad valorem tax. These same percentages apply to ad valorem tax levied by a county, municipality or other taxing authority unless otherwise provided by the Legislature. In Act No. 166, Section 1, subsection 5, designates 38 counties in the state with percentages for the three classes of property which vary from that applicable to the state levy. In all other counties not listed in subsection 5, the percentages set out in Section 1 of Act No. 166 are to be used. See also Section 217 (a), (b) and (c), Act No. 116, supra.

Section 3 of Act No. 166 provides as follows:

"Section 3. This Act shall become law on its passage and approval by the Governor or its otherwise becoming law and shall become effective upon the ratification and adoption of an amendment to the Constitution proposed by this session of the Legislature authorizing the classification of property for purposes of ad valorem taxation."

Before answering your specific questions, I call your attention to the fact that in the case of **Howell v. Debrow,** et al., the Circuit Court of Mobile County on July 28, 1972 ruled that the tax year the classification system is to be first applied is the tax year 1973 which begins October 1, 1972.

In answer to your first question, the new percentages for Class I, Class II, and Class III are to be applied to all property, both old and new, beginning with the tax year 1973. (The county tax assessors have no jurisdiction with respect to Class I property which is assessed by the State Department of Revenue.) The provisions in Title 51, Section 55, Code of Alabama 1940, Recompiled 1958, relating to the assessed value of property fixed by the tax assessor at no less valuation as fixed for taxation for the year next preceding the current tax year would not, in my opinion, be applicable to the assessed value of property for the first tax year to which the classification system is applied. The new percentages for Class II and Class III properties must be used by the tax assessors even though such use may result in the reduction of the assessed value of both old and new properties. The new percentages for Class II and Class III properties will have to be applied by the tax assessors to a fair and reasonable market value of each parcel of property as can best be determined by the tax assessor in accordance with the provisions of Title 51, Sections 46 and 55, Code of Alabama 1940, Recompiled 1958. The fair and reasonable market value thus determined by the tax assessors for the tax year 1973 may be at variance with such market value as determined in the future under the reappraisal program. But this circumstance does not prevent the present application of the new percentages under the classification system.

In answering your second question, there has been only one case relating to the type of properties included in Class III. In the case of **Howell v. Debrow,** referred to above, the definition of "all residential property" in Section 2(b) of Act No. 166 was attacked in a Bill for Declaratory Judgment. The constitutional amendment, Act No. 116, supra, provides that Class III property includes "All agricultural, forest and residential property." Section 1, subsection 2(b) of Act No. 166, provides as follows:

> "2. As used herein: . . .
>
> "(b) 'all residential property' shall include real property used exclusively as a single-family dwelling by the owner thereof;. . ."

The Circuit Court of Mobile County in the **Howell** case ruled as follows:

> "1. That Act No. 166, also known as House Bill No. 57, amending Title 51, Section 17, Code of Alabama, 1940 (Recomp. 1958) is null and void insofar, but only insofar, as said Act limits or purports to limit the definition of 'residential property' solely to real property used exclusively as a single-family dwelling by the owner thereof.
>
> * * * * *
>
> "3. That the residential rental apartment units and multi-family dwellings belonging to Complainants and described in the Bill of Complaint as amended be assessed as 'residential

property' for ad valorem tax purposes and that such assessment be at a ratio of fifteen (15%) percent of assessed value to the fair and reasonable market value of such property."

Agricultural and forest property are defined in subsection 2(c) of Act No. 166.

The answer to your third question is found in Section 217(d), as amended. Constitution of Alabama 1901. Section 1 of Act No. 116, supra, proposed the amendment to Section 217 of the Constitution of Alabama and provides, in part, as follows:

> "Section 217(d) A County, municipality, or other taxing authority may decrease any ad valorem tax rate at any time, provided such decrease shall not jeopardize the payment of any bonded indebtedness secured by such tax. When the tax assessor of each county shall complete the assembly of the assessment book for his county for the ad valorem tax year immediately following the adoption of this amendment and the computation of ad valorem taxes that will be paid upon such assessment, he shall certify to each authority within his county that levies an ad valorem tax the amount of ad valorem tax that will be produced by every levy in that year but excluding for this purpose any assessment of property added to the tax rolls of such county for the tax year in which such certification is made that was not included on the tax rolls for the next preceding tax year. If it shall appear that the estimated ad valorem tax receipts from any levy so estimated shall be less than the receipts from the same levy during the next preceding ad valorem tax year, then the levying authority shall increase each tax rate by such millage as is necessary to produce revenue that is not less than and that is substantially equal to that received during such immediately preceding tax year. It is further provided that any and all millage adjustments shall be made in increments of not less than ½ mill. **The adjustment herein required shall be made only one time and shall be made in the ad valorem tax year immediately following the adoption of this amendment."** (Emphasis added.)

This amendment was adopted on May 30, 1972. The clear language of the amendment **requires** (1) that there be a millage adjustment for local ad valorem taxation for the tax year 1973, if such is necessary to maintain the local ad valorem tax revenue level realized during the 1972 tax year, and (2) that this mandatory millage adjustment shall be made only one time.

A consideration of the circumstances which prompted the inclusion of subsection (d) in this amendment is helpful to its understanding. It was feared by the representatives of some counties that with the adoption of the classification system of assessment ratios as provided by the constitutional amendment, the total assessed value of taxable property within such counties would be reduced, thereby reducing the

ad valorem tax revenues derived by the various levying authorities within such counties if the millage tax rate for 1973 remained the same as was applicable during the 1972 tax year.

Therefore, it is my opinion that the provisions of subsection 217(d) were included in the amendment so as to guarantee that any local levying authority, whose ad valorem tax receipts for the 1973 tax year would be reduced by the application of the assessment ratios prescribed under the new classification system, will receive for the 1973 tax year not less than and substantially equal ad valorem tax receipts as were received during the 1972 tax year.

Following the mandatory one time millage adjustment required by subsection 217(d), the ad valorem tax receipts of a county, municipality or other local taxing authority, may be adjusted by either (1) the variation of assessment ratios within the limit set out in subsection (c) of the amendment, or by (2) the change of applicable millage rates. The former adjustment may be accomplished by the Legislature, the latter by the mechanism provided by subsection 217(e) which provides as follows:

> "Section 217(e) Any county, municipality or other taxing authority may increase the rate at which ad valorem taxes are levied above the limit now provided in the Constitution provided that the proposed increase shall have been (1) proposed by the authority having power to levy the tax after a public hearing on such proposal, (2) thereafter approved by an act of the Legislature, and (3) subsequently approved by a majority vote of the qualified electors of the area in which the tax is to be levied or increased who vote on the proposal."

The amendment spells out what has probably been the law, viz: that a levying authority may decrease any ad valorem tax rate at any time, subject, of course, to any limitation imposed by contract to secure a bonded indebtedness. If, however, after the mandatory one time adjustment of millage rates required by subsection 217(d), a local levying authority wishes to increase its tax rate above the limit now provided in the Constitution, the three steps provided in subsection 217(e) must be followed in order to make such increase. If such a desired increase does not bring the rate above the constitutional limit applicable before the adoption of the amendment, then it is my opinion that the levying authority may increase the rate up to that constitutional limit just the same as it has always been able to do.

Subsection 217(e) was, in my opinion, designed to provide a mechanism for future years **following** the mandatory one time millage adjustment for the tax year 1973, whereby the ad valorem tax rate levied by any local levying authority could be raised within the local tax jurisdiction without a state-wide constitutional amendment. Therefore, there is no conflict between subsections (d) and (e) of Section 217.

In a letter dated September 1, 1972, to the writer of this opinion from the State Senator who drafted this amendment, he stated:

"Subsection (d) of the Amendment was drafted by me and inserted largely at the insistence of the larger counties who were complaining that this Amendment would result in a severe loss of revenue to local authorities. Principally Jefferson County which maintained that its property was assessed at 30%, insisted upon this Amendment. It was designed and drafted to insure that upon the enactment of this Amendment that County, and perhaps others, would not lose any revenue which they had previously been receiving. As I visualized it, it would operate like this: After the adoption of the Amendment, which occurred in 1972, Tax Assessors throughout the State would then apply the percentages fixed in the Amendment or set by the enabling legislation for individual counties **without regard** to whether or not reappraisal of property within a county had been accomplished. That is to say that for the tax year commencing October 1, 1972 (the 1973 tax year) the Tax Assessors would continue to operate precisely as they have in the past throughout the State **except** the prescribed assessment ratios would be applied. Depending upon what evidence you believe, and depending also on the honesty of taxpayers and the industry of Tax Assessors, the assessed value of property within a given county could vary somewhat for the 1973 tax year from the preceding year. If you believe the arguments of Jefferson County, then homeowners in Jefferson County would reduce their overall level of assessment from 30% down to 20%. My personal belief, however, is that if the taxpayers in Jefferson County are anything like honest, and if the Tax Assessor of Jefferson County does his job, the overall assessed value of property in Jefferson County even under the new assessment ratios, would not be reduced. Instead, I think that the total assessed value would probably be increased. But whether it was or not, and again even though no re-evaluation by appraisers had been accomplished, on January 1, 1973 there would be a given quantity of assessed value of property in Jefferson County. At that time the estimated revenue production based on existing millage levies could be ascertained. And if, as contended, such estimate indicated that the revenue to Jefferson County, for local purposes, for the 1973 tax year would be below the 1972 revenue production (not taking into account property added to the tax roll for the first time in 1973), then the various millage levies in Jefferson County would be adjusted upward for the 1973 tax year and taxes would be collected in October of 1973 at such increased millage rate.

"Pursuing the matter further, if at some future date there is a wholesale re-evaluation of property in Jefferson County and following such it appears that the total assessed value of property in Jefferson county is greater under the classification assessment ratios than was fixed by the voluntary assessment

> procedure of the taxpayer for the preceding year, then these options would be available: First, the levying authority could reduce its millage levy to produce the needed revenue (although it would not be legally obliged to do so), or, second, the Legislature could under Subsection (c) reduce the assessment ratio so as to reduce revenue production."

In view of the reappraisal program directed by Act No. 160, Third Special Session, 1971, some question has been raised as to whether or not the first millage adjustment can be made in a particular county prior to the completion of the reappraisal of all property in that county. It should be pointed out that the millage adjustment required by Section 217(d) for the tax year 1973 is in no way connected with the reappraisal program provided for in Act No. 160, Third Special Session, 1971. It is true that Act No. 166, supra, would not have become effective if Act No. 116, supra, the constitutional amendment, had not been approved by the vote on May 30, 1972. However, Act No. 116 is not related to or dependent in any way upon Act No. 160. They are separate pieces of legislation, each having its own field of operation.

Whether or not the provisions of subsection (d), Act 116, as interpreted in this opinion, can be effectively applied for the tax year 1973 is not for this office to determine. The specific language was proposed by the Legislature, it means what it says and it was approved by the vote of the people. The Supreme Court of Alabama in the case of **State v. Dawson,** 264 Ala. 647, 89 So. 2d 103, stated:

> "When language is plain and unambiguous, the meaning obvious, there is no room for construction, '"'Possible or even probable meanings, when one is plainly declared in the instrument itself, the courts are not at liberty to search for elsewhere.'"' State v. Praetorians, supra, Or, as has been said, in such cases, the courts 'have no right "to stray into the mazes of conjecture or search for an imaginary purpose"'. Holt v. Long, supra (234 Ala. 369, 174 So. 176). See Hattemer v. State Tax Commission, 235 Ala. 44, 177 So. 156; State v. Bay Towing and Dredging Co., Ala., 85 So.2d 890."

Therefore, it is my opinion that the mandatory millage adjustment required for the tax year 1973 by subsection 217(d), supra, is to be made without regard to the completion of the reappraisal of property in a county as required by Act No. 160, supra. Of course, the ultimate results of the reappraisal program of property within a county will influence the Legislature and local levying authorities in future adjustments of ratios and tax rates.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

September 22, 1972

Honorable Charles A. Boswell
Commissioner
Department of Revenue
Montgomery, Alabama

Taxation — Ad Valorem Taxes — Motor Vehicles

The provisions of Act No. 166, Third Special Session, 1971 establishing a classification system for ad valorem taxation are not applicable to ad valorem tax on motor vehicles for the tax year 1972.

Opinion by Assistant Attorney General Livingston.

Dear Sir:

Your request for an opinion dated September 22, 1972 is as follows:

"On July 28, 1972 the Circuit Court of Mobile County, Alabama, ruled that the tax year the classification system provided for in Act No. 166, Third Special Session is to be first applied is the tax year 1973 which begins on October 1, 1972.

"Your opinion is requested with respect to the following question: Are the provisions of Act No. 166 applicable in determining the ad valorem tax on motor vehicles when the owners thereof pay the ad valorem tax in order to purchase their 1973 license plates?"

My answer to your question is in the negative. The ad valorem tax on motor vehicles paid on or after October 1, 1972 in order to purchase 1973 license plates is tax ". . . for the preceding tax year . . ." in accordance with Title 51, Section 704, as amended, Code of Alabama 1940, Recompiled 1958. In this case, the preceding tax year is 1972 which began October 1, 1971. As pointed out above, the classification system provided for in Act No. 166 is to be first applied for the 1973 tax year which begins October 1, 1972.

Therefore, in order to purchase 1973 license plates, ad valorem tax paid on motor vehicles will be based on the law as it was prior to Act No. 166, supra.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

September 28, 1972

Honorable K. B. Hill
Tax Assessor, Tuscaloosa County
Tuscaloosa County Court House
Tuscaloosa, Alabama 35401

Ad Valorem Taxes — Constitutional Amendments — Taxation

For ad valorem tax purposes, residential property includes residential rental apartment units, multi-family dwellings, rental houses and duplexes and should be so treated in all counties of the state.

Opinion by Assistant Attorney General Livingston.

Dear Sir:

In your request for an opinion dated September 26, 1972 you state that the Circuit Court of Mobile County ruled in the case of **Howell v. Debrow** as follows:

> "3. That the residential rental apartment units and multi-family dwellings belonging to Complainants and described in the Bill of Complaint as amended be assessed as 'residential property' for ad valorem tax purposes and that such assessment be at a ratio of fifteen (15%) percent of assessed value to the fair and reasonable market value of such property."

Your question is: ". . . will the ruling handed down in the Mobile Circuit Court in the Howell case apply in Tuscaloosa County? Also, will this ruling apply to other rental houses, duplexes, etc."

My answer to each of your questions is "yes."

The decision in the **Howell** case has been appealed to the Court of Civil Appeals. Without deciding whether or not county officials in counties other than Mobile County are bound by the ruling of the Circuit Court of Mobile County, it is my opinion that for the sake of uniformity throughout the state the decision in the **Howell v. Debrow** case should be followed and applied in all counties in assessing residential rental apartment units, multi-family dwellings, rental houses and duplexes unless and until the appellate courts rule otherwise. However, 15% may not be the proper percentage to apply in every county. In Mobile County, Class III property is to be assessed at 15% of fair and reasonable market value for both state and local ad valorem tax. This is not necessarily so for every other county in this state.

There appears to be some confusion concerning the application of the different ratios of assessed value to the fair and reasonable market value of property for state and local taxes as prescribed in Act No. 116 and Act No. 166, Third Special Session 1971. A statement relative to this was made in the last paragraph on page 2 of an opinion from this office dated September 18, 1972 to the tax assessor of Madison County. A copy of that opinion was sent to all tax assessors. I will attempt to further clarify this question.

In all counties **not** listed in subsection 5 of Act No. 166, Third Special Session 1971, Class III property is to be assessed at 15% of fair and reasonable market value **for both state and local taxes.** In the 38

counties listed in subsection 5, Class III property is to be assessed at 15% of fair and reasonable market value **for state taxes** and at the percentages specified for each county **for local taxes.**

The same principle applies to Class II property. In all counties **not** listed in subsection 5 of Act No. 166, Class II property is to be assessed at 25% of fair and reasonable market value **for both state and local taxes.** In the 38 counties listed in subsection 5, Class II property is to be assessed at 25% of fair and reasonable market value **for state taxes** and at the percentages specified for each county **for local taxes.**

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

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